

ORIGINAL

FILED

March 14 2014

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

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COUNSEL FOR PLAINTIFF AND APPELLEE

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 13-0536

CITY OF MISSOULA,

Plaintiff and Appellee,

v.

MARTIN MULIPA IOSEFO,

Defendant and Appellant.

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**UNOPPOSED MOTION TO
SUPPLEMENT THE RECORD ON APPEAL**

The Appellee, State of Montana, respectfully requests that the record on appeal in the above-entitled case be supplemented to add to the record on appeal the attached VERIFIED COPY DVD labelled, "City v. Martin Iosefo; Suppression Hearing 01-04-13, C.O.P. 02-06-13."

Counsel for Appellant, James P. O'Brien, has been contacted regarding this motion to supplement the record on appeal, and does not oppose it. As grounds therefor, the State submits as follows:

BACKGROUND

In Missoula Municipal Court, Iosefo filed a motion to suppress alleging he was illegally arrested by an out-of-jurisdiction law enforcement officer who was working as a security guard. Following briefing by both parties, the municipal court held an evidentiary hearing on January 4, 2013. During the hearing, the City entered four exhibits (photographs) and Iosefo entered the 911 recording. On January 23, 2013, the municipal court issued its order denying the motion and Iosefo entered a guilty plea in municipal court on February 6, 2013, reserving his right to appeal to the Fourth Judicial District Court.

Following briefing by the parties the district court held a hearing on May 8, 2013, where counsel apparently made oral arguments and the matter was deemed submitted. The district court entered its order affirming the municipal court order on June 17, 2013. Iosefo's appeal to this Court followed.

The existing record on appeal includes the following:

- a. Municipal Court File (*see* Doc. 1 in the D.C. electronic record);
- b. District Court File (saved/submitted electronically);
- c. Exhibits from Municipal Court Evidentiary Hearing:
 - i. Plaintiff's Ex. Nos. 1, 2, 4, 5 (*see* District Court electronic record);
 - ii. Defendant's Ex. No. 1, 911 recording on CD; and

- d. Municipal Court recording from 02/06/13 change of plea hearing (submitted by the district court to this Court on February 18, 2014).

During preparation of the State's response brief, the undersigned discovered the audio recording of the January 4 municipal court evidentiary hearing was not included in the record. It was unclear from the record what evidence the district court considered in making its ruling. Therefore, the undersigned sought clarification from the Fourth Judicial District Court Clerk on what evidence was transmitted and considered. Through those discussions it was discovered one recording from the municipal court had not been transmitted to this Court; however, upon review, that recording was of the February 6, 2013 change of plea hearing and not the January 4, 2013 evidentiary hearing.

Given that this Court will need to review the evidence presented at the evidentiary hearing, the recording of that hearing is directly relevant and material to this appeal proceeding. *See State v. Marcial*, 2013 MT 242, ¶ 10, 371 Mont. 348, 308 P.3d 69 (on appeal originating in a limited jurisdiction court of record, this Court examines "the record independently of the district court's decision" to review the trial court's findings, conclusions, and ruling).

The Montana Rules of Appellate Procedure provide, "If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation . . . either before or after transmission of the record to the supreme court, may order that the omission or misstatement be corrected[.]"

Mont. R. App. P. 8(6). If necessary, "a supplemental record [may] be certified and transmitted." *Id.* "All other questions as to the form and content of the record shall be presented to the supreme court." *Id.*

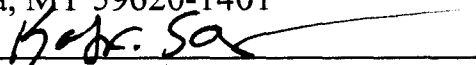
The undersigned sent a copy of the VERIFIED COPY DVD labelled, "City v. Martin Iosefo; Suppression Hearing 01-04-13, C.O.P. 02-06-13," to opposing counsel on March 7, 2014. Counsel for Iosefo was consulted about supplementation of the record in this regard and he does not object.

Therefore, Appellee respectfully requests that the record on appeal be supplemented to include the attached VERIFIED COPY DVD labelled, "City v. Martin Iosefo; Suppression Hearing 01-04-13, C.O.P. 02-06-13."

In conjunction with this motion, Appellee has also filed a Motion for an Extension of Time to File Appellee's Brief asking for additional seven (7) days from the date on which this court rules on the State's Unopposed Motion to Supplement the Record on Appeal.

Respectfully submitted this 14th day of March, 2014.

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By: 
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing
Unopposed Motion to Supplement the Record on Appeal, to be mailed, first class
postage prepaid, to:

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Mr. Gary Hendricks
Senior Deputy Missoula City Attorney
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DATED: _____

3-14-14

